IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 398 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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OMPRAKASH BILLURAM CHHASI

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 398 of 2002

MRCHETAN B. RAVAL for the petitioner.

MR S.S. PATEL, AGP for Respondent State

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 18th July, 2001 passed by the Commissioner of

Police, Ahmedabad City in exercise of power under Section 3 of the PASA Act.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority took into consideration two registered offences and statements of two anonymous witnesses for arriving at this satisfaction. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. However, learned Advocate Mr. Raval appearing for the petitioner has restricted his contention to the fact that the order in question was a successive order passed after the order dated 9.6.2001 was revoked. The said order was passed on the same grounds and in absence of any other fresh ground, he submitted that this order could not have been passed. In support of his contention, he has relied on the decision in the case of Chhagan Bhagwan Kahar V. N.L. Kalna, 1989 SC 1234. He therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. S.S. Patel has strongly opposed this petition. In reply, he placed reliance on provisions of Section 15 of the PASA Act.

5. Having regard to the contention raised before this Court, there is no dispute about the fact that earlier an order of detention was passed by the same detaining authority, detaining the present petitioner on 9.6.2001. That order came to be revoked on 18.7.2001 when the petitioner was in detention. On that very day the present order was passed and served on the detenu. There is no dispute about the fact that the second order is passed on the same grounds of earlier order and in absence of fresh grounds.

5.1 Taking into consideration rival side contentions, the Apex Court, in paragraph 12 of the judgement in Chhagan B. Kahar's case (supra), has observed thus:-

"It emerges from the above authoritative judicial

> pronouncements that even if the order of detention comes to an end either by revocation or by expiry of period of detention, there must be fresh facts for passing a subsequent order." (emphasis supplied).

5.2 In the instant case, the order came to be revoked by the detaining authority and thereafter, present order was passed in absence of fresh grounds for passing a subsequent order. It also requires to be noted that Section 15 of the PASA Act on which learned AGP placed much reliance was also considered by the apex Court while rendering the above decision.

6. In the result, the petition is allowed. The impugned order of detention dated 18.7.2001, passed against the detenu is hereby quashed and set aside. The detenu - Omprakash Billuram Chhasi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs. Direct service is permtited.

7. At this stage, learned AGP requests for suspension of the present order in order to enable the respondents to approach higher forum. This Court is not inclined to accede to this request at the cost of liberty of the detenu - petitioner, when this Court has come to a conclusion that the order is unsustainable in light of clear pronouncement of the apex Court. Liberty of a citizen cannot be curtailed in this manner. The request is therefore, rejected.

(A.L.Dave,J.)

*/Mohandas